IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 45 OF 2003

State
through Public Prosecutor,
High Court of Bombay at Panaji. ... Appellant.

versus

1. Mrs. Suchita Usapkar,
   business,
   residing near Maruti Temple,
   Sanquelim - Goa.

2. Anil s/o Babu Naik,
   business,
   r/o Maulingtad,
   Sanquelim.

3. Sandeep s/o Vasant Govekar,
   business,
   r/o Maulingtad, Sanquelim. ... Respondents.

Mr. S. N. Sardessai, Public Prosecutor for the State.

Mr. J. P. Mulgaonkar, Advocate for the Respondents.

CORAM: P. V. HARDAS, J.

DATED: 24TH NOVEMBER, 2003.

ORAL JUDGMENT

The State being aggrieved by the acquittal of the Respondents/Accused for the offences punishable under Sections 3 and 4 of the Goa Public Gambling Act,

1976, passed by the learned Judicial Magistrate First Class, Bicholim, Goa, by Judgment dated 27th March, 2003, in Criminal Case No.94/OA/Reg/2002/C, has filed the present Appeal.

2. The facts in brief as are necessary for the decision of this Appeal are set out hereunder:-

P.W.4, Rupen Shetgaonkar, at the relevant time, was a P.S.I. attached to the Bicholim Police Station. On 23rd July, 2002, he had received a search warrant from the S.D.P.O, Bicholim and after securing the presence of two panch witnesses namely P.W.2, Prashant Salgaonkar and one Pramod Saraf, along with the staff raided a bar known as Rahul Wine Shop said to be belonging to Respondent No.1. After parking the jeep, P.W.4, P.S.I. Rupen Shetgaonkar, and the other members of the raiding party entered the shop. They had earlier noticed two persons sitting in the chair and accepting matka bets. As soon as the people entered the shop, the two persons made good their escape. P.W.4, P.S.I. Rupen Shetgaonkar, showed the search warrant to Accused Nos.2 and 3, Anil Naik and Sandeep Govekar and obtained their signatures. He also explained them the purpose of the search and the Accused on being asked their names, disclosed their names as Anil Naik and Sandeep Govekar. The Accused

were asked if they wished to take the search of the raiding party. But the Accused declined. Search of the premises commenced and during the search, cash of Rs.1,230/- in different denominations, two matka slip books, two pieces of carbon papers, two ball pens, two matka charts known as "daily news" and dhakad, six matka slips with numbers written on them were found in the drawer of the counter. All these articles were attached by panchanama. The search warrant is at Exh.PW2/B and the Panchanama is at Exh.PW2/A. He accordingly lodged his complaint at Exh.PW4/A. After completion of the investigation, charge-sheet was filed. The learned Trial Judge explained the particulars of the offence vide Exh.5. The Accused denied their guilt and claimed to be tried. The prosecution in support of its case examined 4 witnesses. The learned Trial Judge on considering the evidence acquitted Respondent No.1 on the ground that there was absolutely no material on record to show that she was the owner of the bar known as Rahul Wine Shop where gambling activities in respect of Accused Nos.2 and 3 were carried out. The learned Trial Court found that there was no material to suggest that at the relevant time, they were gaming in the common gaming house. The learned Trial Court, therefore, accordingly acquitted the Respondents/Accused. In the warrant at Exh.PW2/B, it was mentioned that there was a Bar of

Subhash Shet. Obviously, the search warrant was not in the name of Respondent No.1. There is no documentary evidence to show that the said Subhash Shet is the husband of Respondent No.1. In the cross-examination, it is admitted that the address or the name of Accused No.1 was not mentioned in the search warrant at Exh.PW2/B. He has also admitted that neither the house number nor the licence number were mentioned in the search warrant at Exh.PW2/B. Admittedly, the instruments of gambling and cash were found in the counter of the bar.

3. P.W.1, Disha Mapari, states that on 5th August, 2002, P.S.I. Shetgaonkar, had called her alongwith Abbay Dessai and Sandeep Gaonkar at Bicholim Police Station and had told her that he had received a search warrant from S.D.P.O, Bicholim, to conduct the gambling raid at Sanquelim. According to her, when they reached Mapusa Urban Co-op. Bank, he noticed in Rahul Wine Shop two persons accepting matka bets from the members of public. P.S.I. Shetgaonkar along with the other members entered the shop and introduced himself to the said persons and also showed them the search warrant. The signatures of Accused Nos.2 and 3 were obtained on the search warrant and they were asked if they wanted to take search of the raiding party. According to P.W.1, Disha Mapari, in the said Wine

Shop, a table was noticed in which cash of Rs.1,230/- in different denominations was found in the drawer and two matka slip books were found on the table. The contents of the drawer further reveal two matka charts, two ball pens, six matka slips having some numbers written on them. All the articles were attached under the panchanama at Exh.PW2/A. The people who were alleged to have been gambling had fled on seeing the Police.

4. P.W.2, Prashant Salgaonkar, a panch witness, states that when they reached the Wine Shop, the members of the raiding party noticed people accepting matka bets and on seeing the Police, people who were gaming fled. P.W.2, Prashant Salgaonkar, does not state that he had actually seen Accused Nos.2 and 3 accepting matka bets from the public. Moreover, in the cross-examination, it is admitted that P.S.I. Shetgaonkar, is his friend and for that reason, he was present in the Police Station from where he was taken to conduct the panchanama.

5. On consideration of the oral evidence, the learned Trial Court has come to the conclusion that the prosecution had failed to show that matka gambling activities were conducted in the shop of Accused No.1 and, therefore, the prosecution had failed to show any

nexus between the bar of the Accused No.1 to that of matka gambling activities conducted in the shop of Accused No.1. Even P.W.3, Sandeep Gaonkar, in his evidence has stated that he had seen the members of public giving some amount to the Accused but he could not say to whom the said amount was given. The learned Trial Judge has also recorded a finding that the prosecution had not been able to show any nexus between the search warrant and the bar of Accused No.1. The learned Trial Judge, therefore, taking into consideration that the panch witness P.W.2, Prashant Salgaonkar, was a friend of the Investigating Officer has found that the Police has not associated independent persons with the raid. On consideration of the entire evidence, therefore, the learned Trial Court acquitted the Respondents/Accused. Admittedly, none of the instruments were seized from the possession of the Accused. The Respondents/Accused were present in the Wine Shop. In view of the serious discrepancies regarding the name of the Wine Shop, the prosecution has not been able to establish that Accused No.1 was the owner of Rahul Wine Shop in which matka gambling activities were carried out.

6. This is an Appeal against acquittal. The view taken by the learned Trial Court cannot be termed as a perverse view and in my considered opinion, it is

a possible view based on the evidence on record. This Appeal is sans merit and, therefore, deserves to be dismissed and is accordingly dismissed.

P. V. HARDAS, J.

RD.